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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 35

[EPA-R09-OAR-2013-0052;FRL-9788-5]

Clean Air Act Grant: South Coast Air Quality Management District;
Opportunity for Public Hearing

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed action; determination with request for comments and notice of opportunity for public hearing.

SUMMARY: The U.S. EPA has made a proposed determination that the reduction in expenditures of non-Federal funds for the South Coast Air Quality Management District (SCAQMD) in support of its continuing air program under section 105 of the Clean Air Act (CAA), for the calendar year 2012 is a result of non-selective reductions in expenditures. This determination, when final, will permit the SCAQMD to receive grant funding for FY2013 from the EPA, under section 105 of the Clean Air Act.

DATE: Comments and/or requests for a public hearing must be received by EPA at the address stated below by **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

ADDRESSES: Submit comments, identified by docket ID No. EPA-R09-OAR-2013-0052, by one of the following methods:

1. Federal Portal: www.regulations.gov. Follow the online instructions.
2. E-mail: lance.gary@epa.gov or
3. Mail: Gary Lance(Air-8), U.S. Environmental Protection Agency Region IX, 75 Hawthorne Street, San Francisco, CA 94105-3901.

FOR FURTHER INFORMATION CONTACT:

Gary Lance, EPA Region IX, Grants & Program Integration Office, Air Division, 75 Hawthorne Street, San Francisco, CA 94105; phone: (415) 972-3992, fax: (415) 947-3579 or email address at lance.gary@epa.gov

SUPPLEMENTARY INFORMATION: Section 105 of the Clean Air Act (CAA) provides grant support for the continuing air programs of eligible state, local, and tribal agencies. In accordance with 40 CFR 35.145(a), the Regional Administrator may provide air pollution control agencies up to three-fifths of the approved costs of implementing programs for the prevention and control of air pollution. Section 105 contains two cost-sharing provisions which recipients must meet to qualify for a CAA section 105 grant. An eligible entity must meet a minimum 40% match. In addition, to remain eligible for section 105 funds, an eligible entity must continue to meet the minimum match requirement as well as meet a maintenance of effort (MOE) requirement under section 105(c)(1) of the CAA, 42 U.S.C. 7405.

Program activities relevant to the match consist of both recurring and non-recurring (unique, one-time only) expenses. The MOE provision requires that a state or local agency spend at least the same dollar level of funds as it did in the previous grant year, but only for the costs of recurring activities. Specifically, section 105(c)(1), 42 U.S.C. 7405(c)(1), provides that "No agency shall receive any grant under this section during any fiscal year when its expenditures of non-Federal funds for recurrent expenditures for air pollution control programs will be less than its expenditures were for such programs during the preceding fiscal year." Pursuant to CAA section 105(c)(2), however, EPA may still award a grant to an agency not meeting the requirements of section 105(c)(1), "if the Administrator, after notice and opportunity for public hearing, determines that a reduction in expenditures is attributable to a non-selective reduction in the expenditures in the programs of all Executive branch agencies of the applicable unit of Government." These statutory requirements are repeated in EPA's implementing regulations at 40 CFR 35.140-35.148. EPA issued additional guidance to recipients on what constitutes a nonselective reduction on September 30, 2011. In consideration of legislative history, the guidance clarified that a non-selective reduction does not necessarily mean that each Executive branch agency need be reduced in equal proportion. However, it must be clear to EPA, from the weight of evidence, that a recipient's CAA-related air program is not being disproportionately impacted or singled out for a reduction.

A section 105 recipient must submit a final financial status report no later than 90 days from the close of its grant period that documents all of its federal and non-federal expenditures for the completed period. The recipient seeking an adjustment to its MOE for that period must provide the rationale and the documentation necessary to enable EPA to make a determination that a nonselective reduction has occurred. In order to expedite that determination, the recipient must provide details of the budget action and the comparative fiscal impacts on all the jurisdiction's executive branch agencies, the recipient agency itself, and the agency's air program. The recipient should identify any executive branch agencies or programs that should be excepted from comparison and explain why. The recipient must provide evidence that the air program is not being singled out for a reduction or being disproportionately reduced. Documentation in two key areas will be needed: Budget data specific to the recipient's air program and comparative budget data between the recipient's air program, the agency containing the air program, and the other executive branch agencies. EPA may also request information from the recipient about how impacts on its program operations will affect its ability to meet its CAA obligations and requirements; and documentation which explains the cause of the reduction, such as legislative changes or the issuance of a new executive order.

In FY2012, EPA awarded the SCAQMD \$5,234,193, which represented approximately 5% of the SCAQMD budget. In FY-2013, EPA will award

the SCAQMD an estimate of \$4,538,613, which represents approximately 4% of the SCAQMD budget.

SCAQMD's final Federal Financial Report for FY-2011 indicated that SCAQMD's maintenance of effort (MOE) level was \$113,142,559. SCAQMD's final Federal Financial Report for FY-2012 indicates that SCAQMD's maintenance of effort (MOE) level is at \$108,291,832.

The projected MOE is not sufficient to meet the MOE requirements under the CAA section 105 because it is not equal to or greater than the MOE for the previous fiscal year. In order for the SCAQMD to be eligible to receive its FY2013 CAA section 105 grant, EPA must make a determination (after notice and an opportunity for a public hearing) that the reduction in expenditures is attributable to a non-selective reduction in the expenditures in the programs of the South Coast Air Quality Management District. The shortfall stems from a decline of 12.4% in stationary sources revenue from FY2008-09 to FY-2011-12 as reflected in the table below:

Comparison of Stationary Source Revenues

Description	Actual FY 2008-09	Actual FY 2011-12	Difference
Stationary Source Revenues	\$91,472,243	\$79,815,562	(\$11,656,681)

The SCAQMD is a single-purpose agency whose primary source of funding is emission fee revenue. It is the "unit of government for section 105 (c) (2) purposes."

The decline in stationary source revenues would have been even more pronounced had it not been for the SCAQMD Governing Board-adopted fee increases totaling 5.9% over the last three years. The net loss of stationary revenues has given SCAQMD no choice but to reduce its budget and find less costly ways to meet its mandate. Over the past several years actions were undertaken by SCAQMD to balance its budget by reducing overall expenditures, including deleting or not funding vacant positions, implementing a hiring freeze, enacting pension reform, reducing services and supplies expenditures, and utilizing reserves.


Since FY2009-10, SCAQMD has supplemented revenues with \$18.5 million in reserves to balance the budget and meet program requirements.

In addition to the conditions described above, an increase in expenditures relating to permitting activities under Title V of CAA, 42 U.S.C. 7661-7661-f and an increase in non-recurrent capital expenditures in the amount of \$1,406,240 have resulted in a reduction in the non-federal share which also contributed to a decrease in the FY12 MOE level.

Based on: 1.) SCAQMD's inability to levy taxes, 2.) regulated and voluntary emissions reductions, 3.) the general economic downturn, 4.) voter approval of Proposition 26, 5.) an overall decline in stationary source revenue, 6.) expenditure cuts, 7.) use of financial reserves to balance the budget, 8.) increased Title V

permitting activities, and 9.) an increase in non-recurrent capital expenditures, the request for a reset of SCAQMD's MOE meets the criteria for a non-selective reduction determination.

Although SCAQMD receives less than 5 percent of its support from the section 105 grant, the loss of that funding would seriously impact SCAQMD's ability to carry out its clean air program. The revenue generated from Stationary Sources over the last 10 years is detailed below.



The SCAQMD's MOE reduction resulted from a loss of revenues due to circumstances beyond its control. EPA proposes to determine that the SCAQMD lower the FY2012 MOE level to \$108,291,832 to meet the CAA section 105(c)(2) criteria as resulting from a non-selective reduction of expenditures.

This notice constitutes a request for public comment and an opportunity for public hearing as required by the Clean Air Act. All

written comments received by **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]** on this proposal will be considered. EPA will conduct a public hearing on this proposal only if a written request for such is received by EPA at the address above by **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**. If no written request for a hearing is received, EPA will proceed to the final determination. While notice of the final determination will not be published in the Federal Register, copies of the determination can be obtained by sending a written request to Gary Lance at the above address.

Dated: March 6, 2013

Jared Blumenfeld,
Regional Administrator,
Region IX.

